

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JEFFREY CLYDE MURRAY #245927,

Petitioner,

v.

Case No. 2:11-cv-17
HON. R. ALLAN EDGAR

GARY CAPELLO,

Respondent.

_____ /

MEMORANDUM AND ORDER

Petitioner Jeffrey Clyde Murray, a Michigan state prisoner in the custody of the Michigan Department of Corrections, filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to Magistrate Judge Timothy P. Greeley for a report and recommendation.

On June 3, 2011, Magistrate Judge Greeley submitted his report recommending that the habeas petition be denied and dismissed with prejudice on the ground that it is time-barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1). [Court Doc. No. 10]. It is further recommended that a certificate of appealability be denied under 28 U.S.C. § 2253(c)(2). Petitioner Murray has not timely filed an objection.

After reviewing the record, the Court **ACCEPTS and ADOPTS** the report and recommendation pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. LCivR 72.3(b). The Court concludes that the petition for writ of habeas corpus brought under 28 U.S.C. § 2254 shall be

DENIED and DISMISSED WITH PREJUDICE on the ground that it is time-barred by the one-year statute of limitations in 28 U.S.C. § 2244(d)(1). Petitioner Murray has not met his burden of showing that he is entitled to equitable tolling of the statute of limitations.

On January 13, 2011, this Court received from petitioner Murray a separate “motion to remand” his case to the Michigan state trial court, i.e. the Circuit Court of Genessee County, Michigan. The motion to remand [Court Doc. No. 3] is **DENIED**.

If petitioner Murray files a notice of appeal, it will be treated as an application for a certificate of appealability which shall be **DENIED** pursuant to 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1); and *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) for the same reasons expressed in the report and recommendation. Reasonable jurists could not find it debatable whether the habeas petition has been properly dismissed on the ground that it is time barred the statute of limitations in 28 U.S.C. § 2244(d)(1).

A separate judgment will enter.

SO ORDERED.

Dated: June 24, 2011.

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE